

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**KENNY DREW SAYRE,**

**Petitioner,**

**v.**

**Civil Action No. 2:09 CV 35  
(Maxwell)**

**EVELYN SEIFERT, Warden,**

**Respondent.**

**ORDER**

It will be remembered that the above-styled civil action was instituted on March 19, 2008, when the *pro se* Petitioner, Kenny Drew Sayre, filed a Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge James E. Seibert for initial review and report and recommendation pursuant to Rules 83.09 of the Local Rules of Prisoner Litigation Procedure.

On March 20, 2009, Magistrate Judge Seibert issued a Report And Recommendation, wherein he recommended that the Petitioner's § 2254 Petition be dismissed with prejudice in light of the fact that it is a successive Petition which the Petitioner has, for the seventh time, attempted to file without first having obtained the required authorization to do so from the Fourth Circuit Court of Appeals.

In his Report And Recommendation, Magistrate Judge Seibert provided the Petitioner with ten days from the date he was served with a copy of said Report And Recommendation in which to file objections thereto and advised the Petitioner that a

failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled civil action has revealed that the Petitioner was served with a copy of Magistrate Judge Seibert's March 20, 2009, Report And Recommendation on March 23, 2009, and that, to date, no objections thereto have been filed.

Upon consideration of Magistrate Judge Seibert's March 20, 2009, Report and Recommendation, and having received no written objections thereto<sup>1</sup>, it is

**ORDERED** that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on March 20, 2009 (Docket No. 6), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of *Habeas Corpus* by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** and **DISMISSED with prejudice** in light of the fact that it is a successive Petition which the Petitioner has, for the seventh time, attempted to file without first having obtained the required authorization to do so from the Fourth Circuit Court of Appeals. It is further

**ORDERED** that the Clerk of Court shall enter judgment for the Respondent. It is further

**ORDERED** that, should the Petitioner desire to appeal the decision of this Court,

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<sup>1</sup> The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Petitioner and to any counsel of record herein.

**ENTER:** June   10  , 2009

**/S/ Robert E. Maxwell**  
United States District Judge